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09/913,330	08/13/2001	Shane Robert McGill	978-53	7091

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/913,330

Applicant(s)

MCGILL, SHANE ROBERT

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 57-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 57-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date May 10, 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

1. The Amendment filed June 16,2004 has been entered. Claims 1-56 have been cancelled. Claims 57-67 remain pending in the application.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 57,59,60,64-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Jump et al. (US 4959517).

4. Regarding claim 57, Jump et al. teach a method of blending/stirring a food product , such as eggs ,which are cooled to a storage temperature ( eggs are stored in under refrigeration), the container (item 32 in Figure 4) is fitted with a top closure member (item 50 in Figure 4) having a blending element (item 48 of Figure 4)releasable located in driving engagement with a drive (i.e. the motor assembly located between items 46 and 50 in Figures 4,7-10) through and adjacent to the closure member ,the eggs are subjected to microwave energy to heat the eggs to a desired temperature (Abstract, Column 2, line 55 to Column 3, line 25, Column 4, line 30 to Column 5, line 51,Column 8, lines 21-38, Column 9, lines10-18). Although Jump et al. do not explicitly teach dispensing the food

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per se as recited in claim 57, Jump et al. teach the container is for preparing foods and teach the closure is removed after cooking. Since the point of preparing the foods is for consuming the foods and one would have to dispense the food from the container in order to consume the food, dispensing is an inherent step taught by Jump et al. Otherwise, the purpose of food preparation would be pointless.

5. Regarding claim 59, the container 32 and drive (between items 34 and 50) are relatively moved to engage and disengage the blending element 48 via shaft 54 (Figure 7, Column 5, lines 5-54, Column 6, line 62 to Column 7, line 27).

6. Regarding claim 60, the drive 58 is releasably connected to the blending element 48 through the closure member 50, such drive engagement occurring upon engagement of container 32 with the apparatus (i.e. items 34 and motor assembly) via handles 150 and 152, by which the container is located and held (Note Figures).

7. Regarding claim 64, Jump et al. inherently teach the container is held against rotation when the drive is operated since the cover portion holding the rotating shaft is locked in place with the container (Column 6, line 62 to Column 7, line 3, Column 8, lines 3-38).

8. Regarding claim 65, microwave ovens have energy generated from at least two different directions.

9. Regarding claim 66, Jump et al. teach the blending element is made integral with the container when the device is assembled since projection 130 rotatably fits into the hole 132 (Column 7, lines 8-27).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 58 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517) as applied to claims 57,59,60,64-66 above, further in view of Boulard (US 4937418) .

12. Jump et al. teach the particular method of blending food product in a container in a microwave oven to avoid hot spots that conventionally occur during microwave heating (Abstract), but are silent in teaching the microwave energy is directed outwardly from an internal region in the container, as recited in claim 58, such as by an antennae means located in a member extending through the food as recited in claim 61.

13. Like Jump et al., Boulard also teaches a method of mixing and heating bulk material in a container placed in a microwave oven , and proposes a method to overcome uneven heating. Also like Jump et al., Boulard teaches using a blending element, but Boulard further teaches using internal antennae to heat a container holding bulk material to evenly distribute microwave energy throughout the entire bulk of material in the container. Boulard teaches providing the internal antennae integrated with the blending element will *assure* the microwaves are

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distributed evenly *even if* the blending element rotates slowly (column 1, lines 9-23 and 45 -68). Therefore, it would have been obvious to further modify the method of Jump et al. and include antennae located in a member extending through the food such that microwave energy is directed outwardly from an internal region of the container as recited in claims 58 and 61, since Boulard teaches such antennae with the blending element (i.e. the member extending through the food) will assure that there is an even distribution of microwave energy regardless of the blending element speed.

14. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517) as applied to claims 57,59,60,64-66 above, further in view of Reed (US 2626133)

15. Jump et al. teach warming, heating or cooking sauces, gravies, custards, soups, eggs , chili and other foods (Abstract, Column 9, lines 10-17), but are silent in teaching frozen food that is transported to a dispensing location at which the product is heated and blended for the customer to consumer out of the container.

16. Reed teaches frozen custard that is shipped from a factory is prepared for the consumer by stirring and warming the custard in a container with a blending element in order to obtain the desired texture of frozen custard (Column 1, lines 1-55, Column 6, lines 45-62, Column 7, lines 25-64). Therefore, it would have been obvious to modify the method of Jump et al. and select frozen custard transported to a dispensing location at which the product is heated and blended

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for the customer to consumer out of the container since (1) Jump et al. teach using the device for preparing custard and (2) Reed teaches warming while stirring frozen custard transported to a dispensing location will provide a consumer with the desired texture. One would have been substituting one conventional type of custard for another in a preparation process requiring warming and stirring in a container.

17. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517) as applied to claims 57,59,60,64-66 above, further in view of Fiedler (US 4659575) and Reed (US 2626133).

18. Jump et al. teach warming, heating or cooking sauces, gravies, custards, soups, eggs, chili and other foods (Abstract, Column 9, lines 10-17), but are silent in teaching generating carbonation in the product.

19. Fiedler is relied on as evidence that *frozen* custards desirably comprise carbon dioxide and would thus generate carbonation during mixing (Column 1, lines 54-64).

20. Reed is relied on as evidence of the conventionality of warming and stirring *frozen* custard in a container (Column 1, lines 1-55, Column 6, lines 45-62, Column 7, lines 25-64).

21. Therefore, to further include generating carbonation in the product of Jump et al. would have been an obvious result effective variable of the particular food select since Jump et al. teach custards and Fielder teaches frozen custards desirably contain carbon dioxide, which would generate carbonation during

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mixing and Reed teaches it is well known to select a *frozen* custard for a method of blending and warming a custard in a container.

22. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517) as applied to claims 57,59,60,64-66 above.

23. Jump et al. teach the blending element is integral with the container (i.e. where projection 130 rotatably fits into the hole 132) and that the blending element is disengaged to the motor via 124 (Column 7, lines 8-27), but are silent in teaching removing the blending element and container removed from the motor as a unit. However, it would have been obvious to remove the motor from the blending element and container as a unit, depending on the reason for removing the motor. For example, if one were removing the motor to combine additional ingredients to an already heated and mixed material in the container one would not want to remove the blending element, since this would result in possible removal/loss of the contents from the container (e.g. via dripping/falling off of the blending element).

### ***Response to Arguments***

24. Applicant's arguments with respect to the Obvious Double Patenting have been fully considered and are persuasive. The Obvious Double Patenting Rejections have been withdrawn.

25. Applicant's arguments with respect to the rejections made under 35 USC 102(e), 35 USC 102 (b), and 35 USC 103(a) in the Office Action mailed February



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10,2004 have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection were made as set forth above.

### ***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Camezon et al. (US 5899565), Levinson (US 5800852), Aria et al. (US 5280150), Louw (WO 9714271), and Porter (GB 2159027A) teach mixing in containers and using microwave energy for heating.

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

28. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
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